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9 DEPARTMENT OF MANAGED HEALTH CARE

10  
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ORANGE

13 California Department of Managed Health  
Care,

14 Plaintiff,

15 v.

16 Prime Healthcare Services, Inc., a corporation;  
17 Prime Healthcare Anaheim, LLC, a limited  
liability company; Prime HealthCare La  
18 Palma, LLC, a limited liability company;  
Prime Healthcare Huntington Beach, LLC, a  
19 limited liability company; and  
DOES 1-100, inclusive,  
20

21 Defendants.  
22

Case No.:

**CIVIL COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

**(Health & Saf. Code §§ 1379, 1387, 1392)**

**(Unlimited jurisdiction)**

**Exempt from Fees  
(Gov. Code § 6103)**

23 Comes now Plaintiff CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE  
24 (DMHC) and complains of Defendants PRIME HEALTHCARE SERVICES, INC. (PRIME  
25 INC); PRIME HEALTHCARE ANAHEIM, LLC; PRIME HEALTHCARE LA PALMA, LLC;  
26 PRIME HEALTHCARE HUNTINGTON BEACH, LLC; and DOES 1-100 as follows:

27 ///

28 ///

1 **PARTIES**

2 1. Plaintiff DMHC is the state agency charged with enforcement of the Knox-Keene  
3 Health Care Service Plan Act of 1975 (the Act), Health and Safety Code, section 1340 et seq.

4 2. Defendant PRIME INC is a Delaware Corporation with its principal place of business  
5 in the County of San Bernardino.

6 3. Defendant PRIME HEALTHCARE ANAHEIM, LLC is a Delaware limited liability  
7 company believed to be doing business as West Anaheim Medical Center. PRIME  
8 HEALTHCARE ANAHEIM, LLC is believed to be owned, operated, and/or controlled by  
9 Defendant PRIME INC.

10 4. Defendant PRIME HEALTHCARE LA PALMA, LLC is a Delaware limited liability  
11 company believed to be doing business as La Palma Intercommunity Hospital. PRIME  
12 HEALTHCARE LA PALMA, LLC is believed to be owned, operated, and/or controlled by  
13 Defendant PRIME INC.

14 5. Defendant PRIME HEALTHCARE HUNTINGTON BEACH, LLC is a Delaware  
15 limited liability company believed to be doing business as Huntington Beach Hospital. PRIME  
16 HEALTHCARE HUTINGTON BEACH, LLC is believed to be owned, operated, and/or  
17 controlled by Defendant PRIME INC.

18 6. Each Defendant-hospital in this matter is a provider of health care services within the  
19 meaning of the Act, Health and Safety Code section 1345(i).

20 7. Plaintiff DMHC is informed and believes and thereupon alleges that PRIME  
21 HEALTHCARE ANAHEIM, LLC; PRIME HEALTHCARE LA PALMA, LLC; and PRIME  
22 HEALTHCARE HUNTINGTON BEACH, LLC are wholly owned, operated and controlled by  
23 Defendant PRIME INC and or its executives, officers, and board members. The limited liability  
24 company defendants share in whole or in part with PRIME INC the same officers, owners, board  
25 members, and attorneys. Defendant PRIME INC in fact proclaims that it is the owner and  
26 operator of the three Orange County hospitals purportedly owned by the limited liability  
27 company defendants.  
28

1 8. Plaintiff DMHC is informed and believes and thereupon alleges that the limited liability  
2 companies are a mere shell, instrumentality, or conduit for the business ventures of PRIME INC  
3 and its officers, shareholders, and/or board members.

4 9. The business activities, conduct, and actions of each of the limited liability company  
5 Defendants share a unity of interest with Defendant PRIME INC such that PRIME  
6 HEALTHCARE ANAHEIM, LLC; PRIME HEALTHCARE LA PALMA, LLC; and PRIME  
7 HEALTHCARE HUNTINGTON BEACH, LLC are the alter ego, independently and  
8 collectively, of PRIME INC.

9 10. The true names and capacities, whether individual, corporate, or otherwise, of  
10 Defendants sued herein under the fictitious names of DOES 1 through 100, inclusive, are  
11 unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff will  
12 amend this complaint to show the true names of each when the same has been ascertained.  
13 Defendants sued herein as DOES 1 through 100 are, and at all relevant times were, engaged with  
14 Defendant PRIME INC in the development, planning, and placement of the activities complained  
15 of herein and as such directed, managed, controlled, or otherwise engaged in the conduct  
16 complained of herein.

#### 17 JURISDICTION AND VENUE

18 11. Plaintiff reincorporates and realleges Paragraphs 1-10 as if restated fully herein.

19 12. Plaintiff is authorized to bring this action against Defendants as persons who have  
20 violated the Act, pursuant to Health and Safety Code sections 1387 and 1392.

21 13. Plaintiff is informed and believes and thereupon alleges that a substantial number the  
22 actions complained of herein resulted from services rendered by PRIME INC-owned or affiliated  
23 hospitals located within this judicial district, specifically, West Anaheim Medical Center, La  
24 Palma Intercommunity Hospital, and Huntington Beach Hospital.

25 14. Plaintiff is informed and believes and thereupon alleges that a substantial number of  
26 the violations of the Act complained of herein involved health plan enrollees residing in Orange  
27 County.  
28

15. Plaintiff is informed and believes and thereupon alleges that a substantial number of the witnesses and evidence in this case are located within this judicial district.

16. A substantial amount of PRIME INC's and Defendants' liability in this matter arises as a direct and proximate result of its owned or affiliated hospitals located in Orange County, specifically, West Anaheim Medical Center, La Palma Intercommunity Hospital, and Huntington Beach Hospital.

17. The implied contract between Defendant hospitals, and California licensed health plans, including Kaiser Foundation Health Plan (Kaiser), involves at least three Orange County-based hospitals.

18. Pursuant to Health and Safety Code, section 1387, jurisdiction is appropriate in *any* court of competent jurisdiction.

## INTRODUCTION

19. Plaintiff reincorporates and realleges Paragraphs 1-18 as if restated fully herein.

20. PRIME INC is a hospital management company which currently owns and operates nine acute care hospitals in Southern California including Huntington Beach Hospital in Huntington Beach, La Palma Intercommunity Hospital in La Palma, and West Anaheim Medical Center in Anaheim.

21. Each of PRIME INC's hospitals operates an emergency room providing emergency care services to the public, including to health plan enrollees. Each hospital is required by state and federal law; Health and Safety Code section 1317 and 42 U.S.C., section 1395dd et seq. (EMTALA), to provide emergency services to any person seeking such emergency treatment, regardless of that person's ability to pay.

22. The Act regulates health care service plans (health plans) in California. A health plan is a form of health care coverage commonly referred to as an HMO (health maintenance organization). A health plan's distinguishing characteristics include that it is a prepaid plan and the plan maintains a network of providers who have agreed to see the plan's enrollees at a fixed cost. In other words, a health plan enrollee is obligated to pay premiums and select copayments.

1 but is otherwise fully covered for health care services, including emergency services, rendered  
2 by the plan's "network" providers.

3 23. Under California law, Health and Safety Code, sections 1367(i), 1371.4(b); and  
4 California Code of Regulations, title 28, section 1300.71(a)(3)(B), health plans are required to  
5 cover an enrollee's emergency services. Where a health plan enrollee receives emergency  
6 services from a non-network provider, the health plan remains obligated to pay for those  
7 emergency services. A health plan is required to reimburse a non-network emergency care  
8 provider in an amount that is a reasonable and customary value of the services rendered.

9 24. In some instances, the health plan's payment to a non-network emergency service  
10 provider will be less than the amount billed for by the provider. In these situations, there is a  
11 balance remaining on the provider's billed charge. PRIME INC, its affiliates, subsidiaries, and  
12 agents have collected or attempted to collect the balance left owing on the bill from health plan  
13 enrollees. This practice is known in the healthcare industry as "balance billing."

14 25. Defendants' hospitals provide emergency services to many individuals who are also  
15 health plan enrollees including, but not limited to, Kaiser's enrollees. Under California law,  
16 Health and Safety Code section 1371.4, 1345(b)(6), 1367(i) every health plan is required to pay  
17 for emergency services rendered to its enrollees regardless of whether the emergency service  
18 provider is a "network" provider of the health plan.

19 26. Plaintiff is informed and believes and thereupon alleges that for each of the violations  
20 alleged herein, PRIME INC and its owned and affiliated hospitals were not network providers of  
21 the health plan involved.

## 22 **FIRST CLAIM FOR RELIEF**

### 23 **(Health & Saf. Code, §§ 1379, 1387)**

24 27. Plaintiff reincorporates and realleges Paragraphs 1-26 as if restated fully herein.

25 28. Defendant PRIME INC and its affiliates and subsidiaries have rendered emergency  
26 services to thousands of health plan enrollees, including, but not limited to, Kaiser enrollees.

27 29. Health plans licensed by the DMHC, including but not limited to Kaiser, have  
28 reimbursed Defendants directly for emergency services rendered to health plan enrollees.

1        30. In consideration of the PRIME INC providers rendering emergency services to health  
2 plan enrollees, health plans, including but not limited to Kaiser, provide reimbursement for these  
3 services.

4        31. Defendants routinely and as a course of business render emergency services to health  
5 plan enrollees. Health plans routinely and as a course of conduct and business practice  
6 reimburse Defendants for these emergency services.

7        32. Based on the reciprocal obligations imposed by state and federal law for: a)  
8 Defendants to render emergency services; and b) for health plans to reimburse Defendants for  
9 emergency services rendered, Defendants and various health plans including, but not limited to,  
10 Kaiser, have entered into a course of conduct manifesting each parties' agreement that  
11 Defendants will render emergency services to health plan enrollees and health plans such as  
12 Kaiser will reimburse Defendants for emergency services.

13        33. Plaintiff DMHC, therefore alleges there exists an implied in fact contract between  
14 Defendants and various health plans including, but not limited to, Kaiser.

15        34. Defendant PRIME INC and its affiliates and subsidiaries have rendered emergency  
16 services to thousands of health plan enrollees, including, but not limited to, Kaiser enrollees.  
17 Defendants have taken these actions in whole or in part because of their obligation to do so,  
18 compelled by EMTALA and Health and Safety Code section 1317.

19        35. Health plans licensed by the DMHC, including but not limited to Kaiser, have  
20 reimbursed Defendants directly for these emergency services. Health plans have taken these  
21 actions in whole or in part because of the obligations to do so imposed by Health and Safety  
22 Code sections 1371.4, 1367(i), and 1345(b)(6).

23        36. As a direct and proximate result of each party's reciprocal legal obligations, each  
24 party receives consideration for its promises: Defendants receive compensation from health  
25 plans and health plans receive emergency services provided to their enrollees.

26        37. Plaintiff DMHC, therefore alleges there exists an implied in law contract between  
27 Defendants and various health plans including, but not limited to, Kaiser.

1 38. Plaintiff is informed, and believes, and thereupon alleges that Defendants have  
2 collected or attempted to collect the balances owing from as many as 6,000 Kaiser health plan  
3 enrollees. Defendants' actions include, but are not limited to, the conduct described in Exhibit A  
4 attached and incorporated hereto by this reference.

5 39. Defendants and their agents, contractors, and affiliates have balance billed enrollees  
6 through various means including, but not limited to, the use of debt collection agencies. The  
7 amounts sought by Defendants through these billing/collections means are sums which are owed,  
8 if at all, by the health plan.

9 40. Defendants, through affiliated or contracted collection agencies have threatened the  
10 credit ratings of health plan enrollees in an effort to collect on bills for emergency services.

11 41. Plaintiff is informed and believes and thereupon alleges that the threat of negative  
12 credit ratings poses a substantial, irreparable, and unjustified threat to many health plan  
13 enrollees' financial livelihood. A negative credit rating may affect an enrollee's ability to tap  
14 needed credit lines or injure the ability to make purchases of real property, automobiles, or other  
15 consumer necessities. A health plan enrollee may pay the bill directly to avoid this harm and  
16 thereby suffer loss. An injury to an enrollee's credit rating is neither easily or practically  
17 remediable.

18 42. Plaintiff has received dozens of complaints of balance billing by PRIME INC's nine  
19 hospitals from health plan enrollees of at least Kaiser, Anthem Blue Cross, California Physicians  
20 Service d/b/a Blue Shield of California, Aetna, PacifiCare of California, Cigna, Health Net, and  
21 United Healthcare.

22 43. Pursuant to Health and Safety Code section 1379, no provider who has a contract with  
23 a health plan may collect or attempt to collect from an enrollee, sums owed by the health plan.

24 44. PRIME INC and its affiliates and subsidiaries are parties to an implied in fact contract  
25 with health plans including, but not limited to, Kaiser.

26 45. PRIME INC and its affiliates and subsidiaries are parties to an implied in law contract  
27 with health plans including, but not limited to, Kaiser.  
28

1 46. The costs of the emergency services rendered by Defendants to health plan enrollees  
2 are sums owed by the enrollees' respective health plans.

3 47. Defendants, and each of them, have collected or attempted to collect the cost of  
4 emergency services from health plan enrollees themselves.

5 48. Pursuant to Health and Safety Code section 1387(a), Plaintiff may seek a civil penalty  
6 of \$2,500 for each violation of section 1379 proved at trial, which is believed to be an amount in  
7 excess of the jurisdictional minimum of this Court.

8 **SECOND CLAIM FOR RELIEF**

9 **(Health & Saf. Code, §§ 1379, 1392)**

10 49. Plaintiff reincorporates and realleges Paragraphs 1-48 as if restated fully herein

11 50. PRIME INC and its affiliates and subsidiaries are parties to an implied in fact contract  
12 with health plans including, but not limited to, Kaiser.

13 51. PRIME INC and its affiliates and subsidiaries are parties to an implied in law contract  
14 with health plans including, but not limited to, Kaiser.

15 52. The cost of the emergency services rendered by Defendants to health plan enrollees  
16 are sums owed by the health plans.

17 53. Defendants and each of them have collected or attempted to collect the cost of  
18 emergency services from health plan enrollees themselves.

19 54. Plaintiff is informed and believes and thereupon alleges that the practices of PRIME  
20 INC and Defendants complained of herein are systemic, intentional, and concerted amongst each  
21 and every hospital controlled, affiliated, or owned by PRIME INC.

22 55. Pursuant to Health and Safety Code section 1392(a)(1), Plaintiff is entitled to an Order  
23 enjoining any violation of the Act.

24 **PRAYER**

25 **WHEREFORE**, Plaintiff prays as follows:

26 1. For a civil penalty of \$2,500 per violation of the Knox-Keene Act proved at trial.

27 ///

28 ///



1        2. For an Order enjoining Defendants from engaging in the acts, practices, and conduct  
2        constituting the bases for violations of the Act as proved at trial. Plaintiff requests a preliminary  
3        injunction enjoining Defendants and each of them from balance billing any health plan enrollee.

4        3. For an Order enjoining Defendants from engaging in the acts, practices, and conduct  
5        constituting the bases for violations of the Act as proved at trial. Plaintiff requests a permanent  
6        injunction enjoining Defendants and each of them from balance billing any health plan enrollee.

7        4. For other such relief the Court deems just and proper.

8  
9        Dated: June 26, 2008

DEPARTMENT OF MANAGED  
HEALTH CARE

10  
11  
12        By: 

13        MICHAEL D. MCCLELLAND  
14        Senior Counsel  
15        Attorneys for the Department of  
16        Managed Health Care  
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Thursday, May 8, 2008

## Kaiser Permanente members targeted in hospital billing dispute

6,000 Southern California residents have received bills that Kaiser and the state say they do not owe.

**BY COURTNEY PERKES**

The Orange County Register

David Fowlkes returned home from work last year to find his wife, Vicki, unconscious on the couch.

An ambulance rushed her to the emergency room at West Anaheim Medical Center. The couple paid their portion of the bill – a \$250 deductible – and six days later, Vicki was released after treatment for respiratory distress.

But late last week, the Fowlkes were stunned to receive letters from the hospital and a collection service demanding \$50,739.70. They were told Kaiser had not paid the full bill and the Fowlkes had 30 days to pay or be turned over to credit bureaus.

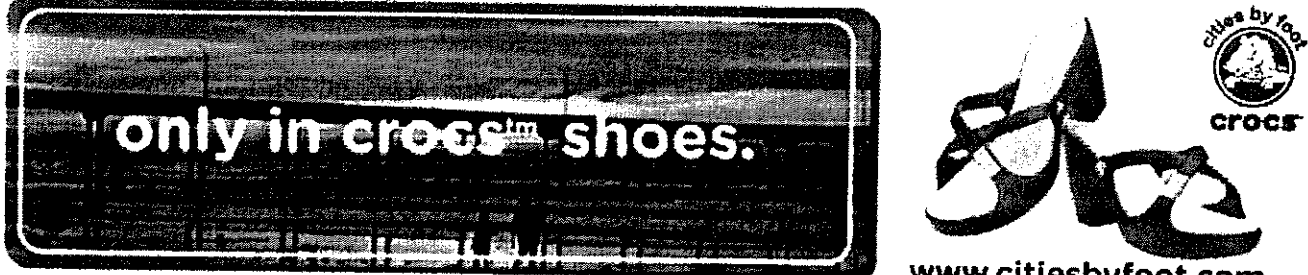
About 6,000 Southern California Kaiser members like the Fowlkes have received billing notices over the past week from eight Prime Healthcare Services hospitals, including West Anaheim and two others in Orange County. The massive and unprecedented collection attempt is part of an accelerating dispute between Kaiser and the controversial hospital chain founded by Dr. Prem Reddy.

"We don't have the resources, nor do we owe the money," said David Fowlkes, a 61-year-old map editor.

Stung consumers are complaining to state insurance regulators about the so-called "balance billing" practice where out-of-network doctors or hospitals try to collect the difference between their charges and what the insurer paid.

For now, sending out such bills is not illegal, although state officials say consumers are not financially responsible for treatment covered in their health plans. But because patients may wrongly pay and collection efforts can be aggressive, the state is

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seeking to ban the practice. A public hearing on the proposed regulations will be held next week in Irvine.

"It's always been the department's position that an enrollee should not be balance billed for the services received," said Richard Martin, a deputy director for the California Department of Managed Health Care, adding that he has never seen collection efforts "to this magnitude."

Since May 2, about 60 Kaiser health plan members have complained to the state. By comparison, since 2004, 90 consumers have complained about efforts by a hospital or doctor to collect the remainder of a bill.

Kaiser has received thousands of calls from worried members, said Dr. Ben Chu, president of Kaiser's Southern California region. Thursday afternoon, Kaiser began calling members to assure them they are not responsible for the bills. Letters will follow next week.

"We're very upset that this has happened," Chu said. "To put our members right in the middle and to scare them completely unnecessarily and threaten to trash their credit rating is just totally uncalled for."

When Reddy bought three local hospitals in 2006 — West Anaheim, Huntington Beach Hospital and La Palma Intercommunity — he

made no secret of his unusual approach to dealing with reimbursement from health plans like Kaiser. About 385,000 Orange County residents have Kaiser insurance.

Reddy canceled HMO contracts that he said didn't pay a fair rate for care, allowing him to then bill health plans at a higher cost when their customers came to the emergency room. Additionally, he refused to automatically transfer patients to other hospitals, saying that would jeopardize patient safety.

Health plans that don't have a contract with a hospital are required to pay a reasonable rate, said Martin from the state.

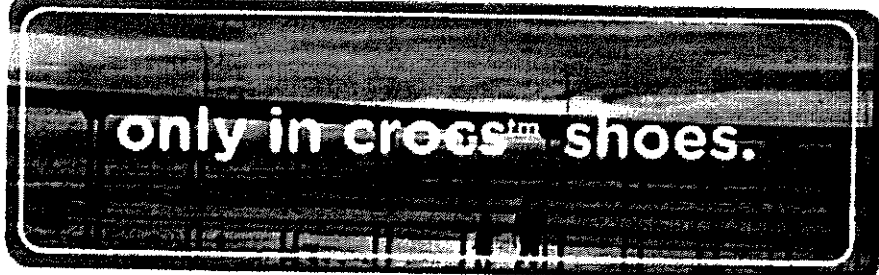
"The question is what is that reasonable value?" Martin said.



And that's where the dispute lies.

In December, Reddy's three local hospitals sued Kaiser, alleging \$10 million in unpaid bills. Reddy said the for-profit hospitals can't afford to forgo fair payment for treating Kaiser's patients.


"We really don't want the patients to pay us," Reddy said. "Patients are the only messengers to the health plans. They should call and say, 'We paid you dearly, how come you don't pay for my emergency care?'"

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The bills sent to Kaiser patients advise them that they may contact Kaiser and include the HMO's toll-free number.

In March, Kaiser reached an \$8 million settlement with Tenet Healthcare over a lawsuit brought by 20 California hospitals, claiming they were owed \$16 million in bills.

Chu of Kaiser said that Prime Healthcare's hospitals have in some cases submitted outrageous charges that Kaiser has challenged.

Westminster police detective Glenn Finley spent three days at Huntington Beach Hospital last summer after experiencing chest pain. He says Kaiser paid almost \$18,000 of a \$22,000 bill. After receiving a \$4,451.42 bill last week for the difference, he filed a grievance with Kaiser.

"Hell no, I'm not going to pay," said Finley, 42. "You think people don't like being called by a collection agency, I'm going to be the other guy who calls the collection agency every day."

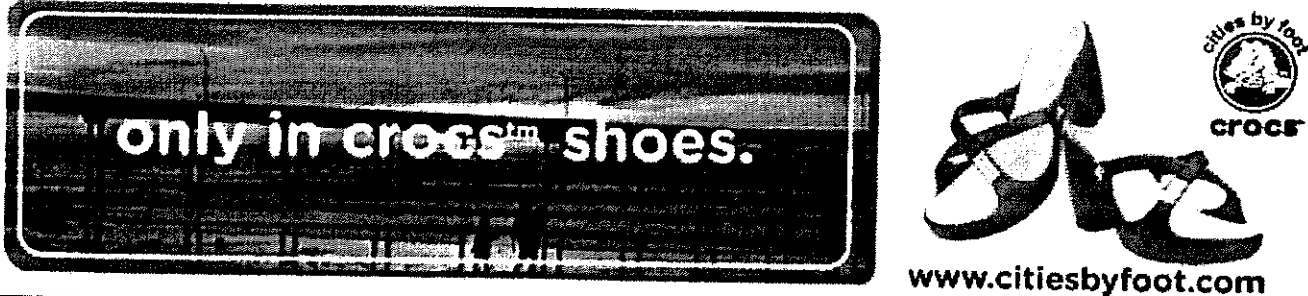
In the case of Vicki Fowlkes, Kaiser paid only \$7,000 of the \$57,000 bill, saying she should have been transferred to a Kaiser hospital, according to David Fowlkes. Fowlkes said he immediately notified Kaiser when his wife was taken to West Anaheim.

"I'm not medically trained and don't know what the criterion is for transfer," David Fowlkes said. "I figured Kaiser would follow through on it. I also thought the hospital would cooperate with Kaiser, which obviously they don't. We're just sort of squeezed in the middle."

The state Department of Managed Health Care is holding a public hearing Wednesday in Irvine on proposed balance billing regulations. The public is invited to comment at 10:30 a.m. at the Irvine Marriott, 18000 Von Karman Ave. To reach the department's HMO Help Center, call 888-466-2219. For information on the proposed regulations, go to the Web site for the Department of Managed Health Care.

**Contact the writer:** 714-796-3686 or cperkes@ocregister.com

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